IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 105 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

BHIKHALAL VAJERAM FAMILY TRUST

Appearance:
MR AKIL QURESHI for MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 11/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred to us in respect of assessment years 1978-79 and 1979-80 :-

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the order of the Commissioner (Appeals) wherein, he had held that the assessments in the case of the assessee should have been made in the regular course and not merely in a protective capacity ?"

2. We have heard Mr Akil Qureshi, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. Mr Qureshi has pointed out that in case of this very assessee, a similar question was referred to this Court in ITR No. 412 of 1983 and in ITR No. 152 of 1985 and that the question came to be decided by this Court on 4.5.1988 and 17.10.2000 respectively. It has been held in the said cases that when a trustee, who is representing the trust in a partnership firm receives share of income of the trust, he receives the income in his capacity as a trustee and not in his capacity as an individual and, therefore, the trustee cannot be taxed in his individual capacity for the amount of income earned by him in his capacity as a trustee.

4. The question which has been raised in the present reference is also similar. We are in respectful agreement with the ratio of the judgment delivered by this Court in ITR No. 412 of 1983 (CIT vs. Bhikhabhai Vajeram Family Trust) and in ITR No. 152 of 1985. We, therefore, answer the question referred in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-